

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1861

Introduced by Assembly Member ~~Fletcher Olsen~~

February 22, 2012

An act to ~~amend~~ add Section 46300.6 of the Education 1243.5 to the Government Code, and to add Section 288.6 to the Penal Code, relating to ~~school attendance~~ school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1861, as amended, ~~Fletcher Olsen. School attendance: independent study pupils. School employees: conduct with pupils.~~

Existing law makes it a felony to engage in certain acts with a minor, including willfully and lewdly committing any lewd or lascivious act with a child who is under 14 years of age. Existing law also provides that any elected public officer who takes public office, or is reelected to public office, on or after January 1, 2006, who is convicted of any specified felony arising directly out of his or her official duties, forfeits all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction, as specified.

This bill would make it a felony for any person who is a teacher or employee at a public elementary or secondary school to engage in a sexual relationship or in excess and inappropriate communications, as defined, with a pupil of any age who is enrolled in the school.

This bill would also require a teacher or school employee who is convicted of a felony pursuant to those provisions to forfeit all rights and benefits in any public retirement system in which he or she is a member, effective on the date of conviction, as specified. The bill would

require any contributions made by that teacher or school employee to the public retirement system to be returned to the teacher or school employee without interest.

By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law authorizes the governing board of a school district or county office of education to offer independent study to meet the educational needs of pupils in accordance with certain requirements. Existing law also prohibits the State Department of Education from apportioning funds to a local educational agency for a pupil in the independent study program if the local educational agency has provided funds or other things of value to the pupil in the independent study program, or to his or her parent or guardian, that is not provided to pupils who attend regular classes, or to their parents or guardians.~~

~~This bill would make technical, nonsubstantive changes to the latter provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1243.5 is added to the Government Code,
2 to read:
3 1243.5. (a) If a teacher or school employee is convicted of a
4 violation of Section 288.6 of the Penal Code, he or she shall forfeit
5 all accrued rights and benefits in any public retirement system in
6 which he or she is a member, effective on the date of the conviction.
7 (b) Any contributions to the public retirement system made by
8 the teacher or school employee described in subdivision (a) shall
9 be returned, without interest, to the teacher or school employee,
10 in a manner conforming with the requirements of the Internal
11 Revenue Code.

1 (c) *The school district that employs a teacher or school employee*
2 *described in subdivision (a) shall notify the public retirement*
3 *system in which the person is a member of the person's conviction.*

4 SEC. 2. *Section 288.6 is added to the Penal Code, to read:*

5 288.6. (a) *Any teacher or employee at a public elementary or*
6 *secondary school who engages in a sexual relationship or in excess*
7 *and inappropriate communication with a pupil of any age who is*
8 *enrolled in the school is guilty of a felony punishable by*
9 *imprisonment in a county jail pursuant to subdivision (h) of Section*
10 *1170.*

11 (b) *For purposes of this section, "excess and inappropriate*
12 *communication" means any communication by a school employee*
13 *to a pupil, regardless of who initiated the communication, that*
14 *may be viewed as derogatory, sexual, lewd, threatening, harassing,*
15 *discriminatory, or suggestive in nature.*

16 (c) *In addition to the penalties provided by this section, a person*
17 *who is convicted of a violation of this section shall, pursuant to*
18 *Section 1243.5 of the Government Code, forfeit his or her rights*
19 *and benefits in any public retirement system in which he or she is*
20 *a member.*

21 SEC. 3. *No reimbursement is required by this act pursuant to*
22 *Section 6 of Article XIII B of the California Constitution because*
23 *the only costs that may be incurred by a local agency or school*
24 *district will be incurred because this act creates a new crime or*
25 *infraction, eliminates a crime or infraction, or changes the penalty*
26 *for a crime or infraction, within the meaning of Section 17556 of*
27 *the Government Code, or changes the definition of a crime within*
28 *the meaning of Section 6 of Article XIII B of the California*
29 *Constitution.*

30 ~~SECTION 1. Section 46300.6 of the Education Code is~~
31 ~~amended to read:~~

32 ~~46300.6. The department shall not apportion funds to a local~~
33 ~~educational agency for a pupil in the independent study program~~
34 ~~if that local educational agency has provided any funds or other~~
35 ~~things of value to the pupil or his or her parent or guardian that~~
36 ~~the local educational agency does not provide to pupils who attend~~
37 ~~regular classes or to their parents or guardians.~~